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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 37

DELLA HADLEY et al.,
Appellants,

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLEES

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER and GWENDOLYN M. WELLS,
Appellants,

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLEES

QUESTION PRESENTED

Whether provisions of Section 178.820-1 of the Missouri Revised Statutes violate the Equal Protection Clause

of the Fourteenth Amendment to the United States Constitution because they establish a certain percentage formula based upon school enumeration, the number of persons between the ages of six and twenty years, for the election of junior college trustees from component school districts.

STATEMENT

Appellees do not believe a full restatement of the case is necessary, but certain provisions in the Missouri statutes regarding the organization and limitations of a junior college district—as well as its powers as alluded to by appellants (Appellants' Brief 6-7)—should be noted.

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the provisions of Sections 178.770 through 178.890 of the Revised Statutes of Missouri first enacted in 1961 (A. 17). These statutes are set out in full as a Brief Appendix attached hereto (B.A. 1a-13a).

Prior to the organization of any junior college district, the State Board of Education, which is appointed by the Governor (Mo. CONST., Art. IX, § 2(a); R.S.Mo. (1967 Supp.), § 161.022), establishes standards including whether a junior college is needed, whether the assessed valuation will support it and whether there are a sufficient number of high school graduates in the proposed district. R.S.Mo. (1967 Supp.), § 178.770 (B.A. 1a-2a). The boundaries of the junior college district must coincide with the boundaries of the component school districts therein which provide educational courses through the 12th grade. *Id.*, § 178.790 (B.A. 3a). Upon the petition of a certain percentage of the voters in each component school district praying that a junior college district be organized to offer 13th and 14th year courses, the State

Board of Education ascertains if its standards are met and, if so, orders that an election be held. To carry the proposal to organize a junior college district must receive a majority of the total votes cast, after publication notice of the organization election has been given. *Id.*, §§ 178.800, 178.810 (B.A. 3a-5a).

Section 178.820, which is attacked by appellants as unconstitutional, sets forth the procedure for election of the six junior college trustees, establishing a certain percentage formula based upon "school enumeration" which is defined elsewhere as "an enumeration of all persons between the ages of six and twenty years." R.S.Mo. (1967 Supp.), § 167.011.[1] If one or more component school districts has more than 33-1/3% and not more than 50% of the total school enumeration of the proposed district, as determined by the last school enumeration, then two trustees shall be elected from each such district and the remaining trustees shall be elected at large from the other school districts. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration, such district shall elect three trustees and the remaining three shall be elected at large from the remainder of the proposed district. If any school district has more than 66-2/3% of the total school enumeration, four trustees shall be elected from such school district and two trustees at large from the remainder of the proposed district.

1. Section 167.011-1 provides in part that "the school board of each district in the state shall cause to be taken and forwarded to the county superintendent of schools an enumeration of all persons between the ages of six and twenty years, resident within the district, giving the name and age of each person, designating male and female, blind and deaf, together with the full name and post-office address of the parent or guardian of each person." Section 167.011-2 provides that "The enumeration shall be taken during each school year and submitted prior to the fifteenth day of May in all districts," with certain exceptions.

The Junior College District of Metropolitan Kansas City, Missouri was organized on June 5, 1964 pursuant to an election held May 26, 1964. Its geographical boundaries include parts of Jackson, Clay, Cass and Platte counties in Missouri, a total of 400 square miles. Since its organization, appellee District has maintained a junior college offering 13th and 14th year courses to all students enrolled therein. There are eight component school districts in appellee District consisting of:

Kansas City School District No. 33,
Center School District No. 58 (south Kansas City),
Consolidated School District No. 1 (Hickman Mills),
Consolidated School District No. 2 (Raytown),
Consolidated School District No. 4 (Grandview),
Reorganized School District No. 7 (Lee's Summit),
North Kansas City School District No. 74 and
Belton School District No. 124.

In 1966-67, the Kansas City School District had 59.49% of the total school enumeration for the junior college district and accordingly has three trustees. The other three trustees were elected from the remaining seven component school districts, with 40.51% of the total school enumeration (A. 17-18, 38).

While a junior college district has certain enumerated powers, R.S.Mo. (1967 Supp.), § 178.770-2 (B.A. 1a-2a), the junior college district statutes themselves provide that all junior colleges so organized "shall be under the supervision of the state board of education." *Id.*, § 178.780 (B.A. 2a). This gubernatorially appointed board administers State financial support; formulates uniform policies as to budgeting, record keeping and student accounting; establishes uniform minimum entrance requirements and curricular offerings; and is responsible for the ac-

creditation of all junior colleges under its control. *Ibid.* Furthermore, certificates to teach in the public schools of Missouri are granted and controlled by the State Board of Education and other authorities, not by the junior college district. *Id.* §§ 168.021, 168.061, 168.071. And there are other limitations upon school districts generally which frequently require their obtaining voter approval. For example, any bond issue by any school district must be approved by two-thirds of the votes cast upon a ballot stating the amount and purposes of the loan. *Id.*, § 164.151. In the Junior College District of Metropolitan Kansas City, any annual tax levy cannot exceed ten cents per $100 valuation without voter approval. *Id.*, § 178.870 (B.A. 11a).

ARGUMENT

Summary

The decision below of the Missouri Supreme Court *en banc* is correct and should be affirmed by this Court.

1. Appellee The Junior College District of Metropolitan Kansas City is a special-purpose body with essentially administrative functions, created under Missouri statutes by the voters of the district for the sole and particular purpose of conducting a two-year college.

2. The decision below is consistent with those of this Court, including *Avery* v. *Midland County*, 390 U.S. 474 (1968), and *Sailors* v. *Board of Education*, 387 U.S. 105 (1967), in that appellee Junior College District is not an entity "having general governmental powers over the entire geographic area served by the body." *Avery* v. *Midland County, supra,* at 485. Accordingly, the "one man, one vote" principle is not applicable, and there is no violation of the Equal Protection Clause under the reasonable percentage formula of Missouri's Section 178.820

for electing junior college trustees based upon school enumeration.

3. The statutory percentage formula for electing junior college trustees in Section 178.820 is not violative of equal protection, furthermore, because the formula is based upon school enumeration and not population, after a proposal to organize a junior college district is carried by majority vote at an at-large election. School enumeration, the annual "enumeration of all persons between the ages of six and twenty years," R.S.Mo. (1967 Supp.) § 167.011, is a reasonable and appropriate standard, and there is nothing invidious or arbitrary about Missouri's statutory percentage formula based thereon for electing junior college trustees, such formula reflecting the statutory design of encouraging various and oftentimes diverse component school districts to join together and form a junior college district.

1. Appellee Junior College District of Metropolitan Kansas City is a special-purpose body with essentially administrative functions, created under Missouri statutes by the voters of the district for the sole and particular purpose of conducting a two-year junior college.

At the outset, it is most important to recognize appellee Junior College District for what it really is. The earlier Statement in this brief and even a cursory examination of the junior college statutes appended hereto (B. A. 1a-13a) abundantly demonstrate that a Missouri junior college district is "truly a special purpose unit of government," as stated in the decision below (A. 34). As distinguished from the broad characterization in appellants' brief (App. B. 6-7, 10), the circumscribed powers and statutory limitations of a Missouri junior college district were pointed out by the Missouri Supreme Court *en banc*, in its six-to-one decision, as follows:

> "The defendant district may only levy taxes to the extent specifically prescribed by statute, except by a vote of the people; it may not incur indebtedness and issue bonds except by a vote of the people. It provides buildings, hires teachers and employees generally, makes rules and regulations for governing the students, and administers the business of the 2-year junior college; it may, when necessary, acquire property by condemnation as most other public bodies may do, including levee districts, fire protection districts and drainage districts. The State Board of Education has supervisory control over the defendant district and all other junior college districts, § 178.780. That Board establishes the 'role' of all junior colleges, administers the 'state financial support porgram,' formulates uniform policies on 'budgeting, record keeping and student accounting,' establishes entrance requirements and 'uniform curricular offerings,' is responsible for all 'accreditation,' and it is required to 'supervise the junior college districts.' A junior college district, under our plan, has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers." (A. 35).[2]

Certainly this analysis from Missouri's highest court regarding particular State statutes deserves the consideration and respect of this Court. *E.g., American Oil Company* v. *Neill*, 380 U.S. 451, 455-456 (1965); *Kingsley Corporation* v. *Regents of University of New York*, 360 U.S. 684, 688 (1959).

The duties and authority of the board of trustees of appellee Junior College District are "essentially administrative" and certainly "not legislative in the classical sense."

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2. Even the one dissenter to the majority opinion below acknowledged that a junior college district "is not primarily a legislative body exercising general governmental functions." (A. 39-40). And compare appellants' virtually bare assertion that appellee junior college district is not a "special-purpose" district and the alleged three characteristics of such a district (App. B. 12-13).

Sailors v. *Board of Education*, 387 U.S. 105, 110 (1967) (discussed *infra*, pp. 14-15). The powers granted are only those required to conduct a two-year junior college, and such powers are limited and circumscribed. Junior college district boards of trustees do not "legislate"; they do not pass laws. The trustees of a junior college district are elected, not to serve constituencies and advocate their interests in enacting legislation which will apply to all persons who live in the district, but to serve as administrators for the special and limited purpose of providing a two-year college education to certain high school graduates.

Apparently in an effort to obfuscate the true nature and limited powers of a special-purpose junior college district, appellants assert that its board of trustees has "broad legislative powers as to the affairs of the district," with the authority among other things "to levy and collect taxes" and "to issue bonds." (App. B. 10). But these are not unbridled statutory authorizations as appellants' brief would imply. As already pointed out in the Statement (*supra*, p. 5) and indicated in the Missouri Supreme Court decision quoted above, any annual tax levy in the Junior College District of Metropolitan Kansas City cannot exceed ten cents per $100 valuation unless voter approval is obtained. R.S.Mo. (1967 Supp.), § 178.870 (B. A. 11a).[3] And each bond issue by every school district, including appellee Junior College District, must under Missouri law be approved by two-thirds of the votes cast at

3. Compare this limited taxing authority with that of one of appellee's component bodies, the Kansas City School District, which by law has tax levying authority of $1.25 per $100 valuation before it must go to the electorate and an additional $2.50 per $100 which requires only majority voter approval. Two-thirds of the voters must approve a levy above $3.75. Mo. CONST., Art. X, §§11(b) and 11(c); R.S.Mo. (1967 Supp.), §164.021. That voter approval on school levy matters is far from perfunctory is indicated by the fact that on April 1, 1969 and again on May 20, 1969, the voters of the Kansas City School District failed to approve a $4.60 and then a $4.30 proposed levy. See *The Kansas City Times*, April 2, 1969 and May 21, 1969.

a bond election. *Id.*, § 164.151. To say that a Missouri junior college district has the power "to levy and collect taxes" and "to issue bonds" just does not present the complete picture.

Equally grievous in this area is appellants' assertion—without citing any authority—that a junior college board of trustees "is independent of municipal control of any city in which it is physically located, is not subject to city zoning laws and has the authority to maintain its own police and fire protection, as well as other functions comparable to a municipal government." (App. B. 10). Such statements fly in the face of the opinion below and simply are without foundation. While a Missouri school district cannot be prohibited via municipal ordinances from selecting and procuring by condemnation, if necessary, sites for public schools, *State* v. *Ferriss*, 304 S.W.2d 896, 902-903 (Mo. Sup. Ct. 1957), it has long been established in Missouri that school districts are not possessed of broad police powers but only with the limited power of public education. *E.g., Community Fire Protection District* v. *Board of Education*, 315 S.W.2d 873, 877 (Mo. Ct. App. 1958); *Bredeck* v. *Board of Education of City of St. Louis*, 213 S.W.2d 889, 894 (Mo. Sup. Ct. 1948); *Kansas City* v. *School District of Kansas City*, 201 S.W.2d 930, 933-934 (Mo. Sup. Ct. 1947). A school district is in no sense a municipal corporation with diversified powers, "but the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district," *State* v. *Gordon*, 133 S.W. 44, 51 (Mo. Sup. Ct. 1910). Moreover, a Missouri junior college district is not a general school district, charged with the huge educational task of providing basic education for thirteen years—kindergarten through the 12th grade—to that great mass of youngsters required to attend by the compulsory school attendance law. R.S.Mo. (1967 Supp.), § 167.031.

Its educational mission is markedly more limited, that of providing 13th and 14th year courses to those who voluntarily want to take them. In short, appellee District does not exercise general functions of government; it only operates a two-year junior college, and its powers and authority in doing so are notably limited and circumscribed.

In its brief as *amicus curiae*, the United States forthrightly acknowledges in its statement that "The basic function of the junior college districts is to supervise the operation of a program of two-year public education at the college level within their respective areas (see Mo. Rev. Stat., § 178.850)." (U.S. B. 6). The Government then candidly admits at the outset of its argument that "it should be noted that the instant case is somewhat atypical, in that the immediate subject is not the common type of independent school district found throughout the country, operating local elementary and secondary public schools within a specified geographic area." (U.S. B. 8).[4] Nonetheless, the Government continues, this case "at least potentially presents the broad issue" of whether "the equal population principle" applies to the "district-based election of school board members generally." (U.S. B. 8-9). And the Government proceeds to urge extendedly the across-the-board application of the "one-man, one vote" rule to all elected school boards.[5]

4. The Government further acknowledges the uniqueness of this particular case in later stating that "An extremely high percentage of school board members in this country are selected through the elective process—about 93 percent" and "Admittedly some 90 percent of those elected are elected at large, rather than from districts." (U.S. B. 23).

5. It is interesting to note that after thirty-seven pages of argument, including eight pages of urging "sound policy considerations" which the Government says favor application of the "equal-population principle to elected school boards" (U.S. B. 34-42), the United States ultimately alludes to the real issue here by urging in its conclusion that the "equal-population principle" is applicable to "the junior college district board of trustees involved in the instant case" (U.S. B. 42).

Appellees submit that the United States goes far afield from the particularities of this case, and that the instant unique situation involving a special-purpose junior college district in Missouri is not an appropriate springboard from which to take the leap the Government advocates. In other words, regardless of what the Government says with respect to "the common type of independent school district found throughout the country, operating local elementary and secondary public schools" (U.S. B. 8), the bulk of the arguments which the United States makes are just not appropriate in this matter involving what indisputably is a unique and limited special-purpose district operating a two-year junior college. For example, despite the "specific concern" of the United States regarding education and "various minority groups in this country which have long been the victims of discrimination" (U.S. B. 40), such discussion is wholly inapposite because in this case there is no suggestion whatsoever of any racial or other type of gerrymandering. Compare *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). This Court cannot and will not, appellees are confident, sidestep the particular facts and underlying State statutes of this case.

2. Being a special-purpose body with essentially administrative functions, appellee Junior College District of Metropolitan Kansas City is not a unit of local government "having general governmental powers over the entire geographic area served by the body," and accordingly the "one man, one vote" principle is not applicable under the decisions of this Court.

Needless to say, appellees do not quarrel with this Court's decisions in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and subsequent reapportionment cases involving State legislatures and their subdivisions. Appellees do insist, however, that under the special Missouri statutes and facts of this case, the "one man, one vote" requirement is not

applicable and that the decision below so holding is correct and consistent with those of this Court.

In *Avery* v. *Midland County*, 390 U.S. 474 (1968), this Court dealt of course with the Midland County, Texas Commissioners Court. The Court pointed out the "vast imbalance" of population among the four districts there involved, ranging from one with 67,906 to another with 414 persons, *id.*, at 476; noted that under the Texas Constitution and statutes, the Commissioners Court " 'is the general governing body of the county,' " *ibid.*; examined the statutory powers and authority of the Commissioners Court and observed that it is "representative of most of the general governing bodies of American cities, counties, towns and villages," *id.*, at 482;[6] and, after discussing *Reynolds* v. *Sims* and the Equal Protection Clause, held as follows:

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6. Contrast the organizational and operational limitations of a Missouri junior college district, as summarized in the Statement above, with the description of the Midland County, Texas Commissioners Court as set forth in *Avery*:

> "The Commissioners Court is assigned by the Texas Constitution and by various statutory enactments with a variety of functions. According to the commentary to Vernon's Texas Statutes, the court:
>
> 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'
>
> The court is also authorized, among other responsibilities, to build and run a hospital, Tex. Rev. Civ. Stat. Ann., Art. 4492 (1966), an airport, *id.*, Art. 2351 (1964), and libraries, *id.*, Art. 1677 (1962). It fixes boundaries of school districts within the county, *id.*, Art. 2766 (1965), may establish a regional public housing authority, *id.*, Art. 1269k, § 23a (1963), and determines the districts for election of its own members, Tex. Const., Art. V, § 18." *Avery* v. *Midland County*, *supra*, at 476-477.

> "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body." *Avery* v. *Midland County, supra,* at 484-485.

The Court then distinguished the previously decided cases of *Sailors* v. *Board of Education,* 387 U.S. 105 (1967), and *Dusch* v. *Davis,* 387 U.S. 112 (1967) (see discussion *infra,* p. 23), and reiterated its holding:

> "Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." *Avery* v. *Midland County, supra,* at 485-486.[7]

It is abundantly clear that this Court's holding in *Avery* was limited to a local governmental unit having "general governmental powers over the (an) entire geographic area." The Court said so twice, using the exact language just quoted. It is also altogether apparent, upon examination of the Missouri statutory scheme for a junior college district and its limited powers as reviewed above, that appellee Junior College District of Metropolitan Kansas City is not a body having "general governmental powers over the entire geographic area." It is not, to use other but similar language in *Avery,* "a unit of local government with general responsibility and power for local affairs." *Id.,* at 483. Accordingly, appellees submit, and notwithstanding appellants' and the United States' assertions to the contrary, *Avery* does not compel

7. Appellees do not feel it necessary to comment on appellants' and the United States' analyses of *Avery* except perhaps to observe that the former passes over the case lightly (App. B. 15) whereas the latter virtually dissects this Court's opinion to the point of obscuring the basic decision (U.S. B. 21-25).

the invalidation of Missouri's Section 178.820 in the instant case. Indeed, the fact that a Missouri junior college district is altogether distinguishable from a Texas Commissioners Court leads to the conclusion that a result here upholding constitutionality, opposite from that of *Avery* under its facts, is in order under that very decision.[8]

As compared with the Midland County, Texas Commissioners Court involved in *Avery*, a Missouri junior college district is actually more akin to a Kent County, Michigan Board of Education, the Board that, as this Court described it, "performs essentially administrative functions" which, while important, "are not legislative in the classical sense." *Sailors* v. *Board of Education*, 387 U.S. 105, 110 (1967).[9] In *Sailors*, of course, as subsequently

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8. Needless to say, in the instant cases there is no "substantially unequal" question like that involved in *Avery*, as appellants' concern over 59.49% of the school enumeration vis-a-vis 50% of the junior college trustees is a far cry from the *Avery* "vast imbalance" in district populations, from 67,906 to 414. The same can also be said regarding the instant situation as compared to the range from 201,777 to 99 in *Sailors* v. *Board of Education*, 254 F. Supp. 17, 18-19 (W.D. Mich. 1966), *aff'd*, 387 U.S. 105 (1967) (see p. 15, fn. 10, *infra*), and also the variance from 29,048 to 733 in *Dusch* v. *Davis*, 387 U.S. 112, 117 (1967) (see p. 10, *supra*), albeit there was no invalidation in these cases.

9. Compare the authority of a Missouri junior college district with the actually even broader powers of the Michigan County board of education described in *Sailors* as follows:

> "The authority of the county board includes the appointment of a county school superintendent (Mich. Stat. Ann., § 15.3298(1)(b) (Supp. 1965)), preparation of an annual budget and levy of taxes (Mich. Stat. Ann., § 15.3298(1)(c) (Supp. 1965)), distribution of delinquent taxes (Mich. Stat. Ann., § 15.3298(1)(d) (Supp. 1965)), furnishing consulting or supervisory services to a constituent school district upon request (Mich. Stat. Ann., § 15.3298(1)(g) (Supp. 1965)), conducting cooperative educational programs on behalf of constituent school districts which request such services (Mich. Stat. Ann., § 15.3298(1)(i) (Supp. 1965)), and with other intermediate school districts (Mich. Stat. Ann., § 15.3298(1)(j) (Supp. 1965)), employment of teachers for special educational programs (Mich. Stat. Ann., § 15.3298(1)(h) (Supp. 1965)), and establishing, at the discretion of the Board of Super-

summarized in *Avery, supra,* at 485, this Court "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations." Appellees accordingly submit that in the instant case, as was stated in *Sailors, supra,* at 111, "the principle of 'one man, one vote' has no relevancy," and thus that the Missouri statutory formula is not violative of equal protection.

It is true that in *Sailors, supra,* at 109, Mr. Justice Douglas relied in part upon the stated fact that "The Michigan system for selecting members of the county school board is basically appointive rather than elective."[10] But it is important that in referring to *Sailors* in the subsequent *Avery* decision, this Court said that there "The Court rested on the administrative nature of the area school board's functions and the essentially appointive form of the scheme employed." *Avery* v. *Midland County, supra,* at 485. Clearly, therefore, the "administrative nature" of a Missouri junior college district's functions is significant,

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visors, a school for children in the juvenile homes (Mich. Stat. Ann., § 15.3298(1)(k) (Supp. 1965)). One of the board's most sensitive functions, and the one giving rise to this litigation, is the power to transfer areas from one school district to another (Mich. Stat. Ann., § 15.3461 (1959))." *Sailors* v. *Board of Education,* 387 U.S. at 110, fn. 7.

A Missouri junior college district particularly has no such power as the last enumerated one of the Michigan county board of education because what limited authority a Missouri junior college district has in "pass[ing] on" (App. B. 7, U.S. B. 6) the annexation of another school district is dependent upon voter initiation and approval of the district proposed to be annexed. R.S.Mo. (1967 Supp.), § 178.890 (B.A. 12a-13a).

10. As explained in *Sailors,* the people of Kent County, Michigan elected the boards of the 39 local school districts, which had vast population differences between them, ranging from a low of 99 to a high of 201,777, and then each local board sent one delegate to the county meeting where five members of the county board of education were chosen, with each delegate voting once regardless of the size of his district. *Sailors* v. *Board of Education,* 254 F. Supp. 17, 18-19 (W.D. Mich. 1966), *aff'd,* 387 U.S. 105 (1967).

and appellants cannot wish *Sailors* away by unconvincingly urging that the instant factual situation "is totally different and distinguishable from the situation in *Sailors*" (App. B. 17). When *Sailors'* deference to "the administrative nature of the area school board's functions" (albeit this was one of two aspects of that opinion) is considered in light of *Avery's* subsequent emphasis on the body's having "general governmental powers over the entire geographic area," it can readily be seen that the decision of the court below is consistent with those of this tribunal. This is true, moreover, notwithstanding the Government's objection (U.S. B. 12-13) to the Missouri Supreme Court's statement regarding *Sailors* that "It appears to us that the non-legislative character of the board in *Sailors* was the determining factor" (A. 36). For even assuming arguendo the scuttling of this aspect of the decision below, there remains *Avery's* emphasis on the unit of local government having—what we do not have here with the Junior College District of Metropolitan Kansas City—"general governmental powers over the entire geographic area," on which of course the Missouri Supreme Court heavily relied.[11]

The false premise in the Government's thinking in this area is typified by the statement that "it is surprising that the court below—which had earlier held the equal-population principle applicable to the election of city council members in *Armentrout* v. *Schooler*, 409 S.W.2d 138

11. In this more important regard, the Missouri Supreme Court unassailably stated:

> "We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is *not* a "unit of local government having general governmental powers over the entire geographic area served by the body." Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54." (A. 36).

(Mo. Sup. Ct.)— . . . concluded that the equal-population principle was inapplicable to the election of school boards" (U.S. B. 20). The all-important difference between the two cases, which the Missouri Supreme Court recognized (A. 33) but the United States does not, is that the city council in *Armentrout* exercised "general governmental functions" with "broad legislative powers" and performed "primarily legislative functions importantly affecting the people," *Armentrout* v. *Schooler, supra,* at 143-144, whereas the junior college district involved here, in the Missouri Supreme Court's words as already pointed out (*supra,* p. 16, fn. 11), "is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution" (A. 36). And, of course, there is the same basic distinction between *Avery* and the instant case, which the United States likewise refuses to acknowledge.[12]

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12. Appellees do not feel it necessary to discuss at length—as did the Government (U.S. B. 13-20)—the district court opinions in *Strickland* v. *Burns,* 256 F. Supp. 824 (M.D. Tenn. 1966) and *Delozier* v. *Tyrone Area School Board,* 247 F. Supp. 30 (W.D. Pa. 1965), or the Iowa Supreme Court's decision in *Meyer* v. *Campbell,* 152 N.W.2d 617 (Iowa Sup. Ct. 1967). As acknowledged by the United States, all three cases predate *Avery,* and the two federal decisions even predate *Sailors.* In view of *Avery's* definitive holding, such earlier decisions are not only not binding on this Court, but also are no longer particularly pertinent. Furthermore, those cases involved situations of "substantially unequal population," *Avery, supra,* at 485-486 (and see discussion *supra,* p. 14, fn. 8), as one district court opinion dealt with population variances from 10,110 to 455, *Strickland* v. *Burns, supra,* at 829, the other concerned a range from 2,876 to 410, *Delozier* v. *Tyrone Area School Board, supra,* at 32, and the Iowa case involved one area of 10,200 people which was "many more than in the other three areas which are fairly equal," *Meyer* v. *Campbell, supra,* at 619. More importantly, as observed by the Missouri Supreme Court below (A. 34), those cases made no distinction between the special entities there involved (*Strickland* and *Meyer* concerned county boards of education, *Delozier* a consolidated school district) and local governing bodies having general governmental powers and functions—the latter situation subsequently determined to be decisive in *Avery.* Moreover, those three decisions clearly did not deal with a junior college district such as the instant one, with a statutory percentage formula

3. Missouri's statutory percentage formula for electing junior college trustees is based upon school enumeration, not population, after a proposal to organize a junior college district is carried by majority vote at an at-large election; and such percentage formula, which reflects the statutory design of encouraging component school districts to join together and form a junior college district, is not invidious or arbitrary and accordingly does not violate the Equal Protection Clause.

In *Reynolds* v. *Sims*, 377 U.S. 533, 567 (1964), this Court stated that "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in *legislative* reapportionment controversies." (Emphasis added). But population need not be the controlling criterion where a special-purpose administrative body such as a junior college district is involved. Indeed, the Missouri system for allocation of trustees among the component school districts in a junior college district is expressly based upon school enumeration, and not population.

Prior to the 1961 enactment of the special statutes for junior college districts involved in this controversy (B.A. 1a-13a), Section 165.123 of the 1959 Missouri Revised Statutes had long provided as follows:

> "Any public school district in this state which now has or hereafter may have a fully accredited high school may provide for two-year college courses in such schools, on the approval of and subject to the supervision of the state board of education."

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based upon school enumeration for electing trustees from the component school districts. See discussion, *infra*, pp. 20-24.

As to other lower court cases cited by appellants (App. B. 7, 22), *Pitts* v. *Kunsman*, 251 F. Supp. 962 (E.D. Pa. 1966), was decided on State law grounds (see U.S. B. 13, fn. 6) and *Davis* v. *Dusch*, 361 F.2d 495 (4th Cir. 1966) was of course subsequently reversed by this Court (see discussion, *infra*, p. 23).

In 1960-61, there were seven public junior colleges in Missouri with a total enrollment of 5,232. State Board of Education, 112th Report of the Public Schools of the State of Missouri (School Year ending June 30, 1961).[13]

With obvious concern over this situation, the Missouri legislature enacted the broadened junior college statutes. As stated in *Three Rivers Junior College District* v. *Statler*, 421 S.W.2d 235, 237 (Mo. Sup. Ct. 1967):

> "All this was at a time when it was common knowledge that the demand and the need throughout the state for higher education called for expansion of public educational facilities. The legislature evidently believed one solution was to increase the size and capabilities of the junior college system, which until then had been limited to what could be offered by local districts in conjunction with their high schools, RSMo 1959, Sec. 165.123."

And as further noted in *Three Rivers*, "With the advent of the junior college district law most of the local junior colleges dropped out of existence or enlarged to form junior college districts and also several new junior college districts were formed." *Id.*, at 237, fn. 1. That the new legislative thrust was effective is reflected by the fact that in 1967-68, there were ten public junior colleges in Missouri, one of course being appellee Junior College District of Metropolitan Kansas City, with a total enrollment of 29,934—almost six times what it was just seven years before under the old system. State Board of Education, 119th Report of the Public Schools of the State of Missouri (School Year ending June 30, 1968).[14]

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13. This report is required of the State Board of Education by Missouri statute, R.S.Mo. (1967 Supp.), § 161.092.

14. Compare these tangible educational results under Missouri's enhanced junior college district system with appellants' and the United States' expressions regarding the general importance of education. (App. B. 8-9; U.S. B. 36-37).

With this general background in mind, it is appropriate now to consider the reasonableness of Missouri's junior college district statutes. At the outset of examining Section 178.820's percentage formula based upon school enumeration for electing junior college trustees, it is important to remember that ahead of selecting trustees, the voters of the entire proposed district must vote by majority ballot to organize a junior college district, comprised of particular component school districts. And in order to carry, the proposal "must receive a majority of the total number of votes cast thereon," with the results certified to the State Board of Education. R.S.Mo. (1967 Supp.), § 178.800 (B.A. 5a). There was such an election regarding the appellee junior college district on May 26, 1964, it will be recalled, and the voters then approved a proposed district consisting of eight component school districts, both urban and rural, covering 400 square miles. (See Statement, *supra*, p. 4; A. 17-18, 38).[15] Under-

15. The proposition submitted to the voters must be in substantially the following form under R.S.Mo. (1967 Supp.), § 178.800) (B.A. 4a):

"PROPOSITION

Shall there be organized within the area comprising the School Districts of _____, state of Missouri, a junior college district for the offering of 13th and 14th year courses, to be known as the Junior College District of _____, Missouri, having the power to impose a property tax not to exceed the annual rate of _____ cents on the one hundred dollars assessed valuation of taxable property without voter approval and such additional taxes as may be approved by vote thereon, as prayed in petition filed with the State Board of Education at Jefferson City, Missouri, on the _____ day of _____, 19____?

For organization _____
Against organization _____"

And, ahead of this, of course, there must first be a petition to so organize signed by sufficient voters and then a determination by the State Board of Education "that the area proposed to be included within the district meets the standards established by it under the provisions of sections 178.770 to 178.890." R.S.Mo. (1967 Supp.), § 178.800 (B.A. 3a-5a). See discussion of the statutory scheme in the Statement, *supra*, pp. 2-5.

lying the operation of Missouri's percentage formula for electing junior college district trustees, therefore, is the express approval and vote of the district electorate, upon an at-large ballot, to organize and establish a junior college district from the component school districts "for the offering of 13th and 14th year courses." R.S.Mo. (1967 Supp.), § 178.800 (B.A. 3a-5a).

Turning then to the "school enumeration" and percentage aspects of the Missouri statutory formula, it can be seen that there are good and plausible reasons for using school enumeration and also for allocating among the component school districts the trustees of a special-purpose junior college district.

School enumeration is an important and vital element in the operation and management of the Missouri public school system. As already noted (*supra*, footnote 1), Section 167.011 of the Missouri Revised Statutes requires each school district to take an enumeration of all persons therein between the ages of six and twenty years on an annual basis, prior to May 15 of each school year, with certain exceptions. School enumeration is the basis on which county school funds are apportioned among the school districts within a county. R.S.Mo. (1967 Supp.), § 166.161. Accordingly, it was altogether reasonable for the Missouri legislature to make school enumeration, rather than population, the basis in the statutory formula for electing from component school districts the junior college trustees, an administrative group with a special-purpose function. As stated in *Sailors*, *supra*, at 110-111:

> "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation."

And again in *Avery, supra,* at 485:

> "This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform strait-jacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems."[16]

Thus, how can there be any constitutional objection to the State of Missouri making school enumeration—the number of school-age children ascertained annually—its criterion in electing junior college district trustees? "Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs." *Sailors* v. *Board of Education, supra,* at 109.[17]

As to the percentage aspect of the Missouri formula, there can likewise be no valid objection. The percentage groupings might not achieve mathematical perfection in all cases when there are only six members of the board

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16. This Court spoke much earlier in a similar vein, as noted in *Sailors, supra,* at 109:

> "The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment." *Anderson* v. *Dunn,* 19 U.S. (6 Wheat.) 204, 226 (1821).

17. Under the instant Missouri statute setting forth a percentage formula for electing junior college trustees based on school enumeration, all qualified voters get to vote, and thus there is no problem of disenfranchisement such as was involved in *Kramer* v. *Union Free School District No. 15,* 282 F. Supp. 70 (E.D. N.Y. 1968), *rev'd,* No. 258, this Term (decided June 16, 1969). As recognized by the United States even before its reversal, *Kramer* is a voting, not an apportionment, case, and this Court's recent decision is not dispositive in the instant case. (See U.S. B. 32, fn. 16.)

to be elected from the total area[18] and when the formula is also related to the boundary lines of the component school districts. *Cf. Dusch* v. *Davis*, 387 U.S. 112 (1967), where, as stated in *Avery, supra*, at 485, this Court "permitted Virginia Beach to choose its legislative body by a scheme that included at-large voting for candidates, some of whom had to be residents of particular districts, even though the residence districts varied widely in population." Here, again, there is a rational basis for the Missouri legislature doing what it did as to a special-purpose junior college district. The percentage aspect of the election method encourages individual school districts to join together to form a junior college district—without their being swallowed up and losing all trustee representation to the larger school districts—and promotes the growth and development of the junior college system. Straight elections at large, as advocated by appellants, would do the opposite. See *Dusch* v. *Davis, supra*, at 117:

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the modern megalopolis in relation to the city, the suburbia, and the rural countryside."

Despite appellants' assertions to the contrary, with the special-purpose nature of a junior college district, there is certainly nothing invidious or arbitrary about Missouri's statutory percentage formula, notwithstanding some variance from absolute mathematical norms. "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invid-

18. See Pock, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS (1962), p. 158 et seq., indicating that experience with existing metropolitan districts demonstrates the advisability of small, workable governing boards.

ious." *Avery* v. *Midland County, supra,* at 484. As stated in *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527 (1959): "The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'" Like the school enumeration part of the statutory formula, therefore, the percentage aspect has "a fair and substantial relation to the object of the legislation"—in this instance the encouraging of various and oftentimes diverse component school districts to join together and form a junior college district, for the better education of Missouri youth.[19] Certainly, such a statutory design, with the notable results which have come about (see discussion, *supra,* p. 19), is far from invidious or arbitrary.[20]

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19. In *Allied Stores,* 358 U.S. at 528, this Court stated:

"We cannot assume that state legislative enactments were adopted arbitrarily or without good reason to further some legitimate policy of the State. What were the special reasons, motives or policy of the Ohio Legislature for adopting the questioned proviso we do not know with certainty, nor is it important that we should, *Southwestern Oil Co.* v. *Texas,* 217 U.S. 114, 126, for a state legislature need not explicitly declare its purpose."

The Court nevertheless went on to say that "it is obvious that it may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso, to encourage the construction or leasing and operation of warehouses in Ohio by nonresidents with the attendant benefits to the State's economy," or similar purposes, and thus that "it cannot be said . . . that the questioned proviso was invidious or palpably arbitrary." *Id.,* at 528-529. Similarly here, it is obvious that "it may reasonably have been the purpose and policy" of the Missouri legislature to encourage various and diverse school districts—each with its own natural reluctance to give up control and authority—to join together on a statutory assured-representation basis to form a junior college district. Compare the Government's argument (U.S. B. 34) that "there was no showing here that arguably rational differences among citizens . . . played any role in the shaping of the Missouri statute here challenged."

20. *Cf.* Mr. Justice Harlan's dissenting opinion in *Avery, supra,* at 493-494, where in commenting about "the crucial field of Metropolitan government," he speaks of the less affluent citizens living within the central city while the more affluent move

In *Avery* v. *Midland County, supra,* at 483-484, this Court stated:

> "Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions."

Here we have a statutory formula based on school enumeration which takes into account those most affected by the special-purpose junior college district's functions—the prospective students in each component school district. Surely, this cannot be a denial of equal protection.

A fallacy in appellants' argument in this whole area is that they tend to equate the term "school enumeration" with "population" and/or "voters." They argue that because the school enumeration of the Kansas City School District is larger than that of the other component school districts within the junior college district, the voters of the Kansas City School District are discriminated against in only being able to elect one-half of the six trustees. Appellees submit that there is no necessary connection or absolute mathematical relationship between the number of persons of student age in a school district and the number of people or voters in the same school district. The Mis-

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to the suburbs to live and work only in the city, says that "An oft-proposed solution to these problems has been the institution of an integrated government encompassing the entire metropolitan area," points out that in many instances such a metropolitan unit requires suburb voter approval, and then states:

> "As a practical matter, the suburbanites often will be reluctant to join the metropolitan government unless they receive a share in the government proportional to the benefits they bring with them and not merely to their numbers. The city dwellers may be ready to concede this much, in return for the ability to tax the suburbs."

souri statute allocating junior college trustees on the basis of certain school enumeration percentages could not alone be held unconstitutional on the basis that the *voters* in one district are discriminated against, even assuming *arguendo* that the "one man. one vote" principle is applicable to school districts under certain circumstances.

A final word is in order as to special-purpose governmental units. While the number of independent school districts is declining (U.S. B. 24, fn. 11 and Bureau of the Census statistics there cited),[21] other special purpose units of government are "the fastest growing category of local government." McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 731 (1968). From 1962 to 1967, special districts other than school districts increased in number from 18,323 to 21,264.[22] In Missouri, at the present time, there apparently are twenty-eight different types of special governmental units, other than school districts. Newsom, SPECIAL DISTRICTS IN MISSOURI. Unlike "school boards across the country" (U.S. B. 33) which are similar in operating local elementary and secondary public schools, other special purpose governmental units are of multitudinous sorts and sizes.[23] Thus, when it comes right down to it, appellee Junior College District of Metropolitan Kansas City is far more a unique and dif-

21. It is interesting to note that out of the 23,390 public school systems in this country in 1967 (see U.S. B. 24, fn. 11), only 407 of them provided college-grade coverage. Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, "Public School Systems in 1966-67" (Preliminary Report dated November, 1967), p. 4.

22. Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, "Governmental Units in 1967" (Preliminary Report dated October, 1967), p. 1.

23. See, Bollens and Schmandt, THE METROPOLIS (1965), p. 172 and generally; Pock, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS (1962); Bollens, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES (1957).

ferent special-purpose governmental unit than it is the common type of school district. A rigid application of the "one man, one vote" principle in the instant case, accordingly, would have a detrimental and "straitjacket" effect on all non-school special-purpose bodies of government. As succinctly stated in *Avery, supra*, at 485, the Constitution and this Court should not be "roadblocks in the path of innovation, experiment, and development among units of local government."

CONCLUSION

For the foregoing reasons, it is submitted that the Missouri legislature was well within its discretion in providing for apportionment of junior college trustees under a percentage formula based on the school enumeration of the component school districts. Appellees accordingly urge that the decision below of the Missouri Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX

Revised Statutes of Missouri (1967 Supplement)
Sections 178.770 Through 178.890
Regarding
Junior College Districts

JUNIOR COLLEGE DISTRICTS

178.770. Organization of junior college districts—standards—corporate powers of districts.—1. In any public school district, or in any two or more contiguous public school districts in this state, whether in the same county or not, the voters resident therein may organize a junior college district in the manner hereinafter provided. Prior to the organization of a district under sections 178.770 to 178.890, the state board of education shall establish standards for the organization of the districts which shall include among other things:

(1) Whether a junior college is needed in the proposed district;

(2) Whether the assessed valuation of taxable, tangible property in the proposed district is sufficient to support adequately the proposed junior college; and

(3) Whether there were a sufficient number of graduates of high school in the proposed district during the preceding year to support a junior college in the proposed district.

2. When a district is organized, it shall be a body corporate and a subdivision of the state of Missouri and shall be known as "The Junior College District of ....., Missouri" and, in that name, may sue

and be sued, levy and collect taxes within the limitations of sections 178.770 to 178.890, issue bonds and possess the same corporate powers as common and six-director school districts in this state, other than urban districts, except as herein otherwise provided. (L. 1963 p. 200 §13-77) Effective 7-1-65 (Source: L. 1961 p. 357 §1).

178.780. State board to supervise colleges—duties.—1. Tax supported junior colleges formed prior to October 13, 1961, and those formed under the provisions of sections 178.770 to 178.890 shall be under the supervision of the state board of education.

2. The state board of education shall:

(1) Establish the role of the two-year college in the state;

(2) Set up a survey form to be used for local surveys of need and potential for two-year colleges; provide supervision in the conducting of surveys; require that the results of the studies be used in reviewing applications for approval; and establish and use the survey results to set up priorities;

(3) Require that the initiative to establish two-year colleges come from the area to be served;

(4) Administer the state financial support program;

(5) Supervise the junior college districts formed under the provisions of sections 178.770 to 178.890 and the junior colleges now in existence and formed prior to October 13, 1961;

(6) Formulate and put into effect uniform policies as to budgeting, record keeping, and student accounting;

(7) Establish uniform minimum entrance requirements and uniform curricular offerings for all junior colleges;

(8) Make a continuing study of junior college education in the state; and

(9) Be responsible for the accreditation of each junior college under its supervision. Accreditation shall be conducted annually or as often as deemed advisable and made in a manner consistent with rules and regulations established and applied uniformly to all junior colleges in the state. Standards for accreditation of junior colleges shall be formulated with due consideration given to curriculum offerings and entrance requirements of the University of Missouri. (L. 1963 p. 200 §13-78) Effective 7-1-65 (Source: L. 1961 p. 357 §2).

178.790. Boundaries of districts.—The boundaries of any junior college district organized under sections 178.770 to 178.890 shall coincide with the boundaries of the school district or of the contiguous school districts proposed to be included, and the junior college district shall be in addition to any other school districts existing in any portion of the area. (L. 1963 p. 200 §13-79) Effective 7-1-65 (Source: L. 1961 p. 357 §3).

178.800. Petition to establish district—election on proposal.—Whenever a petition, signed by voters in each component school district within a proposed junior college district area, equal in number to five per cent of the number of votes cast for the director receiving the greatest number of votes within each component school district at the last preceding school election in each school district at which a director was elected, is presented to the state board of education, praying that a junior college district be organized for the purpose of offering junior college (13th and 14th year) courses, if the state board of education determines that the area proposed to be included within the district meets the standards estab-

lished by it under the provisions of sections 178.770 to 178.890, it shall order an election held within the proposed district to vote on the proposal and to elect trustees, at the next following annual school election or meeting. If annual school elections of component school districts within a proposed junior college district area are not held on the same date, the state board of education shall set the date for the organization election. At the election, the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of ....., state of Missouri, a junior college district for the offering of 13th and 14th year courses, to be known as the Junior College District of ....., Missouri, having the power to impose a property tax not to exceed the annual rate of ..... cents on the one hundred dollars assessed valuation of taxable property without voter approval and such additional taxes as may be approved by vote thereon, as prayed in petition filed with the State Board of Education at Jefferson City, Missouri, on the ..... day of ....., 19....?

For organization .....

Against organization .....

The election shall be conducted in the manner provided under the school law. Within fifteen days after the election, the results shall be transmitted by those receiving them under law in each component district to the state board of education, by certificates attesting to the total number of votes cast within each district on the proposition, the votes cast for and against the proposition and the votes cast for each candidate for trustee, together

with the tally sheets attested to by the judges and clerks of election at each polling place within each district. The proposal to organize the junior college district, to carry, must receive a majority of the total number of votes cast thereon and the secretary of the state board of education, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon and shall certify the results to the state board of education. If the certificate of the secretary of the state board of education shows that the proposition to organize the junior college district has received a majority of the votes cast thereon, the state board of education shall make an order declaring the junior college district organized and cause a copy thereof to be recorded in the office of recorder of deeds in each county in which a portion of the new district lies. If the proposition carries, the board shall also determine which candidates have been elected trustees under section 178.820. If the proposition to organize the district fails to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees. (L. 1963 p. 200 §13-80) Effective 7-1-65 (Source: L. 1961 p. 357 §4).

178.810. Notice of election—election conducted, how. —1. Notice of the organization election shall be given by the state board of education by publication in at least one newspaper of general circulation in each county including any portion of the proposed junior college district, and within each city not in a county within the proposed district, once a week for three consecutive weeks, the last insertion to be no longer than one week prior to the date of election.

2. The election shall be conducted in the same manner, at the same polling places and by the same election

officials who are conducting elections on that day in each component school district. If there is no school election conducted on that day in a component school district within the proposed junior college district, then for that component school district the polling places and the judges and clerks of election shall be selected and the election conducted in the same manner and by the same board or body that selects judges and clerks and conducts elections in that component district. (L. 1963 p. 200 §13-81) Effective 7-1-65 (Source: L. 1961 p. 357 §6).

178.820. Trustees elected at large or from component districts—terms—qualifications.—1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years

each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

2. Candidates for the office of trustee shall be citizens of the United States, at least thirty years of age who have been resident taxpayers of the proposed district for at least one whole year preceding the election and if trustees are elected other than at large they shall be resident taxpayers of those election districts for at least one whole year next preceding the election. All candidates for the first board of a district shall file their declarations of candidacy with the state board of education at least thirty days prior to the date of the organization election. (L. 1963 p. 200 §13-82) Effective 7-1-65 (Source: L. 1961 p. 357 §5).

178.830. Board of trustees—oath—officers—quorum—vacancies filled, how—seal.—Newly elected members of the board of trustees shall qualify by taking the oath of office prescribed by article VII, section 2*, of the constitution of Missouri. The board shall organize by the election of a president, and vice-president, a secretary and a treasurer. The secretary and treasurer need not be members of the board. A majority of the board

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*Note: Probably should be 11.

constitutes a quorum for the transaction of business, but no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the whole board votes therefor. Any vacancy occurring in the board shall be filled by appointment by the remaining members of the board, and the person appointed shall hold office until the next election held by the junior college district when a trustee shall be elected for the unexpired term. The board shall keep a common seal with which to attest its official acts. (L. 1963 p. 200 §13-83) Effective 7-1-65 (Source: L. 1961 p. 357 §7).

178.840. Regular district elections—notice—filing of candidates—certification of results—special elections on bond issues.—1. After organization, the voters of the junior college district shall vote for trustees and on all other propositions provided by law for submission at school elections which are applicable to junior college districts. Regular elections in junior college districts shall be held at the following times:

(1) If a component district holds its elections on the first Tuesday after the first Monday in April in the years propositions must be voted upon in the junior college district, then elections in the junior college district shall be held at that time in each component district.

(2) In all other junior college districts elections shall be held on the first Tuesday in April in the years propositions must be voted upon.

2. Elections in junior college districts shall be conducted as provided in subsection 2 of section 178.810, except that in any junior college district wherein by subdivision (2) of subsection 1 elections are held on the first Tuesday in April and all trustees are not to be elected at large, no election shall be held in a component district solely for the purpose of electing trustees of the

junior college district and any trustee elected from such a component district whose term would normally expire in a year in which no regular school district election would be held in the component district shall continue to hold office until the next regular election in the component district at which time his successor shall be elected for a term of six years. All costs incident to elections shall be borne by the junior college district. Notice of elections shall be given by the board of trustees by publication in at least one newspaper of general circulation within each county, and within each city not in a county within the district, at least once a week for three consecutive weeks, the last insertion to be no longer than one week prior to the date of election. If trustees are elected other than at large throughout the entire district, then only those voters within the election district from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that district. All candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees at least thirty days prior to the date of election. If voting machines are not used in a component district, then the board of trustees shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the junior college district.

3. The secretary of the board of education, district clerk or the board of election commissioners, as the case may be, in each component school district, shall certify to the board of trustees of the junior college district the total number of votes cast for each candidate and the votes cast on all questions submitted within fifteen days after any election. Within forty-eight hours thereafter, at least a majority of the then qualified members of the board of trustees of the junior college district shall jointly tabulate the results so received, shall declare and certify the candi-

dates receiving the greatest number of votes for terms of six years each and until their successors are elected and qualified and shall declare and certify the results of the votes cast on any question presented at the election.

4. Anything in the foregoing provisions of this section to the contrary notwithstanding, any junior college district may call a special election on a proposal to borrow money and issue bonds for any lawful purpose. The special election shall be held on the date to be specified in the call, and notice thereof shall be given and the special election shall be held in the manner provided by the law governing such elections in six-director school districts. (L. 1963 p. 200 §13-84 and p. 346 §165.813, A. L. 1967 S. B. 82) Effective 8-1-67 (Source: L. 1961 p. 357 §8).

178.850. District to provide college courses—per capita cost to be determined—tuition charges.—A junior college district organized under sections 178.770 to 178.890 shall provide instruction, classes, school or schools for pupils resident within the junior college district who have completed an approved high school course. The board of trustees of the district shall determine the per capita cost of the college courses, file the same with the state board of education and, upon approval thereof by the state board of education, shall require of all non-residents who are accepted as pupils a tuition fee in the sum that is necessary for maintenance of the college courses. In addition thereto, the board may charge resident pupils the amounts that it deems necessary to maintain the college courses, taking into consideration the other funds that are available under law for the support of the college courses. (L. 1963 p. 200 §13-85) Effective 7-1-65 (Source: L. 1961 p. 357 §9).

178.860. Board to appoint employees—fix compensation—teachers to be members of public school retirement

system.—The board of trustees shall appoint the employees of the junior college, define and assign their powers and duties and fix their compensation. All certificated personnel shall be members of the public school retirement system of Missouri under provisions of section 169.010, RSMo. (L. 1963 p. 200 §13.86) Effective 7-1-65 (Source: L. 1961 p. 357 §10).

178.870. Tax rate limits—how increased.—Any tax imposed on property subject to the taxing power of the junior college district under article X, section 11(a) of the constitution without voter approval shall not exceed the annual rate of ten cents on the hundred dollars assessed valuation in districts having one billion dollars or more assessed valuation; twenty cents on the hundred dollars assessed valuation in districts having five hundred million dollars but less than one billion dollars assessed valuation; thirty cents on the hundred dollars assessed valuation in districts having one hundred million dollars but less than five hundred million dollars assessed valuation; forty cents on the hundred dollars assessed valuation in districts having less than one hundred million dollars assessed valuation. Increases of the rate with voter approval shall be made in the manner provided in chapter 164, RSMo, for school districts. (L. 1963 p. 200 §13-87) Effective 7-1-65 (Source: L. 1961 p. 357 §11).

178.880. Taxation of public utility property—rate not included in determining rate to be levied by other school districts.—All real and tangible personal property owned by railroads, street railways, boats, vessels, bridge companies, telegraph companies, electric light and power companies, electric transmission line companies, pipe line companies, express companies, air line companies and other companies and public utilities whose property is assessed by the state tax commission shall be taxed at the

same rate of taxation which is levied on other property in the junior college district in the same manner and to the same extent that the property is subject to assessment and taxation for general county purposes, and all of the provisions of chapters 151, 153, 154 and 155, RSMo, shall apply to taxation by junior college districts to the same extent as if the junior college districts were specifically included in the provisions contained in chapters 151, 153, 154 and 155, RSMo, except that the taxes levied by junior college districts shall not be included for the purpose of determining the average school levy for the other school districts in the county in which they are situated. The taxes levied against the property by junior college districts shall be collected in the same manner as taxes are collected on the property from general county taxes. (L. 1963 p. 200 §13-88) Effective 7-1-65 (Source: L. 1961 p. 357 §12).

178.890. Annexation of school districts—new junior college district formed, when—refusal without cause of petition to annex, penalty.—1. If the area of an entire school district which adjoins a junior college district organized under sections 178.770 to 178.890 desires to be attached thereto and become a part of the junior college district it may do so in the manner provided for annexation under section 162.441, RSMo. If the area of an entire school district which adjoins a district offering a two-year college course under section 178.370 on October 13, 1961, and receiving aid under section 163.191, RSMo, desires to be attached thereto for junior college purposes only, the annexation shall be completed under section 162.441, RSMo, and upon the annexation, a special junior college district shall be established in the entire area as provided in sections 178.770 to 178.890, and notice thereof shall be given to the state board of education. The state board of education, within sixty days, shall call a special election for the election of trustees to be conducted in the manner provided in sections 178.810 and 178.820.

2. If the board of trustees of the receiving district rejects the petition for annexation, the state board of education may be petitioned for a hearing and upon receipt of the petition the state board shall establish the time and place and proceed to a hearing. If the state board of education finds that refusal to honor the petition for annexation has been made without good cause, the state board in its discretion may withhold a portion or all of the state aid from the district which is payable under the provisions of section 163.191, RSMo. (L. 1963 p. 200 §13-89) Effective 7-1-65 (Source: L. 1961 p. 357 §15).